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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MARIA F.N.,) NO. CV 18-4384-E
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION
16)
17 NANCY A. BERRYHILL, DEPUTY)
18 COMMISSIONER FOR OPERATIONS,)
19 SOCIAL SECURITY,)
20)
21 Defendant.)
22)
23)
24)
25)
26)
27)
28)

18 PROCEEDINGS

19
20 Plaintiff filed a complaint on May 23, 2018, seeking review of
21 the Commissioner's denial of benefits. The parties consented to
22 proceed before a United States Magistrate Judge on June 17, 2018.
23 Plaintiff filed a motion for summary judgment on November 29, 2018.
24 Defendant filed a motion for summary judgment on February 8, 2019.
25 The Court has taken the motions under submission without oral
26 argument. See L.R. 7-15; "Order," filed May 29, 2018.

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1 **BACKGROUND**

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3 Following a previous remand,¹ an Administrative Law Judge ("ALJ")
4 examined the record and conducted a second hearing at which Plaintiff
5 and a vocational expert testified (Administrative Record ("A.R.") 458-
6 89). The ALJ found that Plaintiff suffers from severe "lumbar spine
7 degeneration and left knee joint arthritis," but retains the residual
8 functional capacity for a reduced range of light work (A.R. 461-62).
9 According to the ALJ, Plaintiff's capacity includes an ability to
10 "stand and/or walk for four hours and sit for six hours during an
11 eight-hour workday . . . [and Plaintiff] does not require an assistive
12 device for walking" (A.R. 462). The ALJ discounted Plaintiff's
13 testimony that her subjective symptomatology further reduces her
14 functional capacity (A.R. 463-66).
15

16 A vocational expert testified that a person having the residual
17 functional capacity the ALJ found to exist could perform Plaintiff's
18 past relevant work as a sewing machine operator (A.R. 486-87). The
19 ALJ relied on this testimony in finding Plaintiff not disabled (A.R.
20 467).
21

22 **STANDARD OF REVIEW**

23
24 Under 42 U.S.C. section 405(g), this Court reviews the
25 Administration's decision to determine if: (1) the Administration's
26

27 ¹ In Najera v. Colvin, CV 16-2442-E, this Court reversed
28 in part a previous denial of benefits and remanded the matter for
further administrative proceedings.

1 findings are supported by substantial evidence; and (2) the
2 Administration used correct legal standards. See Carmickle v.
3 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
4 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
5 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
6 relevant evidence as a reasonable mind might accept as adequate to
7 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
8 (1971) (citation and quotations omitted); see also Widmark v.
9 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

10
11 If the evidence can support either outcome, the court may
12 not substitute its judgment for that of the ALJ. But the
13 Commissioner's decision cannot be affirmed simply by
14 isolating a specific quantum of supporting evidence.
15 Rather, a court must consider the record as a whole,
16 weighing both evidence that supports and evidence that
17 detracts from the [administrative] conclusion.

18
19 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
20 quotations omitted).

21 22 DISCUSSION

23
24 After consideration of the record as a whole, Defendant's motion
25 is granted and Plaintiff's motion is denied. The Administration's
26 findings are supported by substantial evidence and are free from

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1 material² legal error. Plaintiff's contrary arguments are unavailing.

2
3 **I. Substantial Evidence Supports the Conclusion Plaintiff Can Work.**

4
5 A social security claimant bears the burden of "showing that a
6 physical or mental impairment prevents [her] from engaging in any of
7 [her] previous occupations." Sanchez v. Secretary, 812 F.2d 509, 511
8 (9th Cir. 1987); accord Bowen v. Yuckert, 482 U.S. 137, 146 n.5
9 (1987). Plaintiff must prove her impairments prevented her from
10 working for twelve continuous months. See Krumpelman v. Heckler, 767
11 F.2d 586, 589 (9th Cir. 1985), cert. denied, 475 U.S. 1025 (1986).
12 Substantial evidence supports the conclusion that Plaintiff failed to
13 carry her burden in this case. The Administrative Record contains
14 relevant evidence that "a reasonable mind might accept as adequate to
15 support [the] conclusion" that Plaintiff was not disabled from all
16 employment through the date of the ALJ's decision. See Richardson v.
17 Perales, 402 U.S. at 401 (9th Cir. 2006).

18
19 Dr. Payam Moazzaz, a consultative examining orthopedic surgeon,
20 opined Plaintiff has a residual functional capacity even greater than
21 the capacity the ALJ found to exist (A.R. 263). Dr. Moazzaz' opinion
22 furnishes substantial evidence supporting the conclusion Plaintiff can
23 work. See Orn v. Astrue, 495 F.3d 625, 631-32 (9th Cir. 2007)
24 (examining physician's opinion based on independent clinical findings
25

26
27 ² The harmless error rule applies to the review of
28 administrative decisions regarding disability. See Garcia v.
Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 constitutes substantial evidence to support a disability
2 determination); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.
3 2001) (same).

4
5 Non-examining state agency physicians also opined Plaintiff has a
6 residual functional capacity greater than the capacity the ALJ found
7 to exist (A.R. 65, 73, 84, 94). These non-examining physicians'
8 opinions lend additional support to the ALJ's findings. See Andrews
9 v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (where the opinions of
10 non-examining physicians do not contradict "all other evidence in the
11 record" an ALJ properly may rely on these opinions); Curry v.
12 Sullivan, 925 F.2d 1127, 1130 n.2 (9th Cir. 1990).

13
14 Medical testing, including x-rays and MRIs, suggest no more than
15 mild problems with Plaintiff's back and left knee (A.R. 262, 286-87,
16 294, 297, 307, 322-25, 399-401, 406-08, 416-17, 739-40, 750).
17 Furthermore, examination reports reflect Plaintiff's ability to walk
18 without an assistive device and with a "normal gait" (A.R. 260, 263,
19 852).

20
21 The vocational expert testified that a person with the residual
22 functional capacity the ALJ found to exist could perform Plaintiff's
23 past relevant work as a sewing machine operator (A.R. 486-87). This
24 testimony furnishes substantial evidence that there exist significant
25 numbers of jobs Plaintiff can perform. See Barker v. Secretary, 882
26 F.2d 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771,
27 775 (9th Cir. 1986); see generally Johnson v. Shalala, 60 F.3d 1428,
28 1435-36 (9th Cir. 1995) (ALJ properly may rely on vocational expert to

1 identify jobs claimant can perform); 42 U.S.C. § 423(d)(2)(A); 20
2 C.F.R. §§ 404.1520, 416.920.

3
4 To the extent the evidence of record is conflicting, the ALJ
5 properly resolved the conflicts. See Treichler v. Commissioner, 775
6 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to the ALJ" to
7 resolve conflicts and ambiguities in the record). The Court must
8 uphold the administrative decision when the evidence "is susceptible
9 to more than one rational interpretation." Andrews v. Shalala, 53
10 F.3d at 1039-40. The Court will uphold the ALJ's rational
11 interpretation of the evidence in the present case notwithstanding any
12 conflicts in the record.

13
14 **II. The ALJ did not Materially Err in Discounting Plaintiff's**
15 **Subjective Complaints.**

16
17 Plaintiff challenges the legal sufficiency of the ALJ's stated
18 reasons for discounting Plaintiff's testimony concerning her
19 subjective symptomatology. The Court discerns no material error.

20
21 An ALJ's assessment of a claimant's credibility is entitled to
22 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
23 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as
24 here, an ALJ finds that the claimant's medically determinable
25 impairments reasonably could be expected to cause some degree of the
26 alleged symptoms of which the claimant subjectively complains, any
27 discounting of the claimant's complaints must be supported by
28 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234

1 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
2 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
3 (indicating that ALJ must offer "specific, clear and convincing"
4 reasons to reject a claimant's testimony where there is no evidence of
5 "malingering").³ An ALJ's credibility finding "must be sufficiently
6 specific to allow a reviewing court to conclude the ALJ rejected the
7 claimant's testimony on permissible grounds and did not arbitrarily
8 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d
9 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);
10 see also Social Security Ruling ("SSR") 96-7p (explaining how to
11 assess a claimant's credibility), superseded, SSR 16-3p (eff. Mar. 28,
12 2016).⁴ As discussed below, the ALJ stated sufficient reasons for
13 deeming Plaintiff's subjective complaints less than fully credible.
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17 ³ In the absence of an ALJ's reliance on evidence of
18 "malingering," most recent Ninth Circuit cases have applied the
19 "clear and convincing" standard. See, e.g., Leon v. Berryhill,
20 880 F.3d 1041, 1046 (9th Cir. 2017); Brown-Hunter v. Colvin, 806
21 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d
22 1133, 1136-37 (9th Cir. 2014); Treichler v. Commissioner, 775
23 F.3d at 1102; Ghanim v. Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir.
24 2014); Garrison v. Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir.
2014); see also Ballard v. Apfel, 2000 WL 1899797, at *2 n.1
(C.D. Cal. Dec. 19, 2000) (collecting earlier cases). In the
present case, the ALJ's findings are sufficient under either
standard, so the distinction between the two standards (if any)
is academic.

25 ⁴ The appropriate analysis under the superseding SSR is
26 substantially the same as the analysis under the superseded SSR.
27 See R.P. v. Colvin, 2016 WL 7042259, at *9 n.7 (E.D. Cal. Dec. 5,
28 2016) (stating that SSR 16-3p "implemented a change in diction
rather than substance") (citations omitted); see also Trevizo v.
Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that
SSR 16-3p "makes clear what our precedent already required").

1 The ALJ stressed that, in numerous respects, the objective
2 medical evidence fails to support the claimed severity of Plaintiff's
3 subjective symptoms (A.R. 463-66). An ALJ permissibly may rely in
4 part on a lack of supporting objective medical evidence in discounting
5 a claimant's allegations of disabling symptomology. See Burch v.
6 Barnhart, 400 F.3d 676, 681 (2005) ("Although lack of medical evidence
7 cannot form the sole basis for discounting pain testimony, it is a
8 factor the ALJ can consider in his [or her] credibility analysis.");
9 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (same); see
10 also Carmickle v. Commissioner, 533 F.3d at 1161 ("Contradiction with
11 the medical record is a sufficient basis for rejecting the claimant's
12 subjective testimony"); Parra v. Astrue, 481 F.3d 742, 750 (9th Cir.
13 2007), cert. denied, 552 U.S. 1141 (2008) (subjective knee pain
14 properly discounted where laboratory tests showed knee function within
15 normal limits); SSR 16-3p ("[O]bjective medical evidence is a useful
16 indicator to help make reasonable conclusions about the intensity and
17 persistence of symptoms, including the effects those symptoms may have
18 on the ability to perform work-related activities . . ."). Although
19 inconsistencies between subjective symptom complaints and objective
20 medical evidence cannot be the sole basis for discounting a claimant's
21 complaints, Burch v. Barnhart, 400 F.3d at 681, the ALJ did not
22 discount Plaintiff's complaints solely on the basis that the
23 complaints were inconsistent with the objective medical evidence.

24
25 As the ALJ also indicated, Plaintiff's testimony was inconsistent
26 with the observations of third party examiners (A.R. 464, 466).
27 Plaintiff testified she must use a cane whenever she walks (A.R. 54,
28 554). Yet, as previously indicated, third party examiners reported

1 Plaintiff had a "normal gait" and walked without the need for an
2 assistive device (A.R. 260, 263, 852). An ALJ properly may discount a
3 claimant's assertions which are inconsistent with the observations of
4 third parties. See Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir.
5 1999); Copeland v. Bowen, 861 F.2d 536, 541 (9th Cir. 1988); see also
6 SSR 16-3p at *7.

7
8 As the ALJ also indicated, the treatment received by Plaintiff
9 has been relatively conservative and there evidently was a lengthy (3
10 year) gap in her treatment (A.R. 463-66). At times, Plaintiff took
11 only relatively mild medications for her allegedly disabling back and
12 knee pain (A.R. 259, 335, 356).⁵ Observations regarding the
13 relatively conservative nature of a claimant's treatment properly may
14 factor into the evaluation of a claimant's credibility. See
15 Tommasetti v. Astrue, 533 F.3d at 1039-40; Parra v. Astrue, 481 F.3d
16 at 751; Osenbrock v. Apfel, 240 F.3d 1157, 1166 (9th Cir. 2001); see
17 also Burch v. Barnhart, 400 F.3d at 681 (unexplained failure to seek
18 medical treatment may discredit a claimant's allegations of disabling
19 symptoms); Chavez v. Department of Health and Human Services, 103 F.3d
20 849, 853 (9th Cir. 1996) (failure to seek "further treatment" for back
21

22
23 ⁵ One doctor did recommend surgery on Plaintiff's left
24 knee (A.R. 398). However, the ALJ properly rejected the validity
25 of this recommendation, stating legally sufficient reasons for
26 doing so (A.R. 465). See Smolen v. Chater, 80 F.3d at 1285 (ALJ
27 may reject uncontradicted opinion of a treating physician by
28 stating "clear and convincing" reasons that are based on
substantial evidence in the record); Winans v. Bowen, 853 F.2d
643, 647 (9th Cir. 1987) (ALJ may reject the contradicted opinion
of a treating physician by stating "specific, legitimate" reasons
for doing so that are based on substantial evidence in the
record).

1 problem among specific findings justifying rejection of claimant's
2 excess pain testimony).

3
4 The ALJ also pointed out evidence that Plaintiff's pain may be
5 adequately controlled with medication (A.R. 464; see also A.R. 845).
6 See Warre v. Commissioner, 439 F.3d 1001, 1006 (9th Cir. 2006)
7 ("Impairments that can be controlled effectively with medication are
8 not disabling for the purpose of determining eligibility for SSI
9 benefits.") (citations omitted); see also 20 C.F.R. §§
10 404.1529(c)(3), 416.929(c)(3) (effectiveness of medication and
11 treatment is a relevant factor in determining the severity of a
12 claimant's symptoms); Tommasetti v. Astrue, 533 F.3d at 1040 (a
13 favorable response to treatment can undermine a claimant's complaints
14 of debilitating pain or other severe symptoms); Morgan v.
15 Commissioner, 169 F.3d 595, 599 (9th Cir. 1999) (ALJ properly
16 discredited claimant's subjective complaints by citing physician's
17 report that symptoms improved with medication); Tidwell v. Apfel, 161
18 F.3d 599, 602 (9th Cir. 1999) (ALJ did not err in considering that
19 medication "aided" claimant's symptoms in assessing claimant's
20 credibility).

21
22 To the extent one or more of the ALJ's stated reasons for
23 discounting Plaintiff's credibility may have been invalid, the Court
24 nevertheless would uphold the ALJ's credibility determination under
25 the circumstances presented. See Carmickle v. Commissioner, 533 F.3d
26 at 1162-63 (despite the invalidity of one or more of an ALJ's stated
27 reasons, a court properly may uphold the ALJ's credibility
28 determination where sufficient valid reasons have been stated). In

1 the present case, the ALJ stated sufficient valid reasons to allow
2 this Court to conclude that the ALJ discounted Plaintiff's credibility
3 on permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The
4 Court therefore defers to the ALJ's credibility determination. See
5 Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will
6 defer to Administration's credibility determination when the proper
7 process is used and proper reasons for the decision are provided);
8 accord Flaten v. Secretary of Health & Human Services, 44 F.3d 1453,
9 1464 (9th Cir. 1995).⁶

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25 ⁶ The Court need not and does not determine whether
26 Plaintiff's subjective complaints are credible. Some evidence
27 suggests that those complaints may be credible. However, it is
28 for the Administration, and not this Court, to evaluate the
credibility of witnesses. See Magallanes v. Bowen, 881 F.2d 747,
750, 755-56 (9th Cir. 1989).

1 **CONCLUSION**

2
3 For all of the foregoing reasons,⁷ Plaintiff's motion for summary
4 judgment is denied and Defendant's motion for summary judgment is
5 granted.

6
7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: March 4, 2019.

10 /s/
11 CHARLES F. EICK
12 UNITED STATES MAGISTRATE JUDGE
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24 _____
25 ⁷ The Court has considered and rejected each of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 640 F.3d 881,
887-88 (9th Cir. 2011) (discussing the standards applicable to
evaluating prejudice).